

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

UNITED STATES OF AMERICA

*** CRIMINAL NO. 05-30014**

VERSUS

*** JUDGE JAMES**

WARNER D. WILLIAMS

*** MAGISTRATE JUDGE HAYES**

REPORT AND RECOMMENDATION

Before the undersigned Magistrate Judge, on reference from the District Court, is a motion filed by defendant to vacate or correct sentence pursuant to 28 U.S.C. § 2255 (Document No. 33). For reasons stated below, it is recommended that the motion be **DISMISSED WITHOUT PREJUDICE**.

The record in this matter reveals the following:

On April 26, 2005, defendant entered a guilty plea on Count One of Bill of Information after waiver of indictment on same. On July 21, 2005, defendant was sentenced to 24 months in prison, to run consecutively with his previously imposed federal sentence imposed on revocation of a previous supervised release, and to be followed by 3 years of supervised release and restitution in the amount of \$4,871.42. Defendant appealed on August 31, 2005, and that appeal is still pending.


The Fifth Circuit has long held that a district court should not entertain a §2255 motion during the pendency of a direct appeal because "the disposition of the appeal may render the motion moot." *Welsh v. United States*, 404 F.2d 333 (5th Cir.1968), *abrogated on other grounds United States v. Ortega*, 859 F.2d 327 (5th Cir.1988); *see also Jones v. United States*, 453 F.2d 351, 352 (5th Cir.1972). **Accordingly, it is recommended that Defendant's § 2255 motion be dismissed without prejudice to Defendant reasserting it after the Fifth Circuit has ruled on his direct**

appeal.

Under the provisions of 28 U.S.C. §636(b)(1)(c) and F.R.C.P. Rule 72(b), the parties have **ten (10) business days** from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within **ten (10) business days** after being served with a copy thereof. A courtesy copy of any objection or response or request for extension of time shall be furnished to the District Judge at the time of filing. Timely objections will be considered by the District Judge before he makes a final ruling.

A PARTY'S FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS, CONCLUSIONS AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN TEN (10) BUSINESS DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY, EXCEPT ON GROUNDS OF PLAIN ERROR, FROM ATTACKING ON APPEAL THE UNOBJECTED-TO PROPOSED FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT JUDGE.

THUS DONE AND SIGNED at Monroe, Louisiana, this 19th day of October, 2005.



KAREN L. HAYES
U. S. MAGISTRATE JUDGE